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DELIVERED BY FOIA ONLINE AND EMAIL

July 29, 2015

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566 - 1667

Re: Reconsideration of fee waiver determinations to FOIA Request Numbers EPA-HQ-2015-008265, EPA-HQ-2015-008372, EPA-HQ-2015-008592

Dear FOIA Officer:

**Request and Justification for Waiver of Fees**

The Union of Concerned Scientists (UCS) requests that all fees incurred in connection with the above request to your agency be waived, because “disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records will contribute significantly to public understanding of the operations or activities of the government.

UCS addresses the six requirements of the Environmental Protection Agency (EPA) regulations regarding public interest fee waivers below:

Factor 1: The subject of the request.

The subject of this request is the operations and activities of the federal government. UCS is requesting correspondence and other documents created by EPA employees pertaining to the development and release of the Draft Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources (hereafter referred to as the Assessment). The information we are seeking is a critical part of a long-term project undertaken by the EPA to help the American public better understand and address vulnerabilities to drinking water caused by hydraulic fracturing activities.

Factor 2: The informative value of the information to be disclosed.

The information we are seeking will significantly contribute to better public understanding of government operations and activities and, to UCS’ knowledge, is not duplicative or available otherwise in the public domain. Hydraulic fracturing is a significant issue in environmental policy making, and has been subject to intense public scrutiny and debate. Further, there is a profound lack of public information about the risks and benefits of hydraulic fracturing. To the best of its ability, given the limited information to which it had access, the EPA undertook a

major study to evaluate the impact of hydraulic fracturing on drinking water. It produced an assessment and various related documents that are critical to public understanding of hydraulic fracturing impacts.

As the EPA states in the Assessment's executive summary, the assessment "can be used by federal, tribal, state, and local officials; industry; and the public to better understand and address any vulnerabilities of drinking water resources to hydraulic fracturing activities." The extremely comprehensive, national-level assessment is intended to have and will have wide-ranging impacts on how the conversation about hydraulic fracturing evolves in the United States. It will also have a significant impact on potential policy actions taken at the federal, state, and local level. The Assessment received widespread media coverage and is already being used by stakeholders to shape public opinion and push policy priorities.

Given the important role played by EPA's study in informing government decision-makers and the general public, its scientific integrity is of paramount importance. Yet, discrepancies between some of the scientific conclusions presented in the body of the report and the policy conclusions and prescriptions in the executive summary, press releases, and related materials raise the concern that the report was not prepared in a manner that was fully independent of political considerations.

For example, the press materials and the executive summary framed the assessment as concluding there are no "widespread, no systematic widespread impacts on drinking water resources" from hydraulic fracturing, even though the assessment itself describes examples of significant contamination in numerous parts of the hydraulic fracturing process. Further, despite the EPA's acknowledgement that lack of access to data stymied its attempts to fully evaluate potential risks; it reached this broad conclusion, even with the data and language in the report itself suggesting serious impacts.

In addition, previously disclosed records<sup>1</sup> suggest that oil and gas industry representatives attempted to influence and limit the scope of the Assessment. Previously, EPA ceased investigations around water quality concerns in Dimock, Pennsylvania; Pavillion, Wyoming; and Parker County, Texas following pushback from the companies involved.<sup>2</sup> It is important for the public to have faith that the report and associated materials were developed free from inappropriate political influence.

The records that are requested will provide greater insight into the EPA's development of the assessment on the potential impacts of hydraulic fracturing on drinking water resources and its supporting documents such as press releases, talking points, the executive summary, etc. By examining the requested records, the public will be able to better understand the scientific independence of the Assessment and its supporting materials. It is critical that an assessment of this importance is free from political, corporate, or other external interference. Disclosure of the requested records will help inform the public on whether science was suppressed, censored, distorted, or manipulated in the weeks and months leading up to the release of the assessment

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<sup>1</sup> Reported at [http://www.huffingtonpost.com/jesse-coleman/documents-reveal-epas-nat\\_b\\_6808996.html](http://www.huffingtonpost.com/jesse-coleman/documents-reveal-epas-nat_b_6808996.html).

<sup>2</sup> See [http://www.ucsusa.org/center-for-science-and-democracy/toward-an-evidence-based-fracking-debate.html#.VbkQf\\_kw0Zw](http://www.ucsusa.org/center-for-science-and-democracy/toward-an-evidence-based-fracking-debate.html#.VbkQf_kw0Zw)

due to political or other outstanding concerns.

Factor 3: The contribution to an understanding of the subject by a reasonably broad audience of persons interested in the subject.

As discussed below, UCS qualifies as a representative of the news media. Therefore, under 40 C.F.R. §2.107 (1)(2)(iii), it should “be presumed that [UCS] will satisfy” the requirement that disclosure of the requested information must contribute to public understanding.

In addition, the records requested by UCS will contribute to the understanding of EPA’s research and policies on fracking by a reasonably broad segment of the public. States, private companies, individual landowners, and ordinary citizens are already using the Assessment to argue for or against expansion or reduction of hydraulic fracturing activity. The EPA is the only entity to produce an assessment of this scope and magnitude. The extent to which the assessment and related materials are the product of political interference or the suppression of scientific integrity will thus be of interest to a large segment of the public.

UCS can and will ensure that the requested records reach a broad audience and contribute to public understanding of how the EPA finalized the assessment on the potential impacts of hydraulic fracturing on water resources and its supporting documents and whether there might have been political or other inappropriate interference and/or influence on the process. We expect that some records may show inappropriate influence of non-scientific agency staff on the scientific content of the hydraulic fracturing assessment. Should this be the case, after reviewing and evaluating the records, we will make relevant documents publicly available on our website and provide an analysis of those records to the public, as appropriate. In addition, we will work with reporters at major news organizations to bring the content of the documents to the public’s attention.

UCS has a strong track record of informing a wide spectrum of the public regarding major issues of scientific concern. Founded in 1969, UCS is a science-based public interest organization with more than 450,000 supporters, including parents, businesspeople, scientists, teachers, and students, throughout the United States. To help further our work of using sound scientific analysis—not political calculations or corporate hype—to create a healthy, safe, and sustainable future, as well as promote scientific integrity in government science, we seek to provide our members and activists, as well as the general public, up-to-date information, news, and commentary on various aspects of science policy.

UCS consistently publishes in-depth reports on topics of critical interest.<sup>3</sup> It also publishes newsletters, fact sheets, blogs and other publications in print and electronic form. Moreover, UCS serves as a resource for the media and testifies before Congress, including on issues related to scientific integrity.

UCS maintains a public website, [www.ucsusa.org](http://www.ucsusa.org), with science-policy related information and news. Our website is visited an average of 15,000 times each day. In March of 2015, we had over

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<sup>3</sup> Visit [www.ucsusa.org/scienceanddemocracy](http://www.ucsusa.org/scienceanddemocracy) for numerous examples of reports published on a variety of different topics.

one million unique visitors to our website. Visitors to the website include scientists, teachers, businesspeople, federal and state officials, and other concerned citizens. Moreover, information posted on UCS' website is often linked to websites of other organizations. UCS also has a blog, available at [blog.ucsusa.org](http://blog.ucsusa.org) and is active on Facebook and Twitter.

UCS has a long history of successfully working with the news media to hold government officials accountable. UCS staff possess detailed knowledge of political interference in science at the EPA.<sup>4</sup> Our work in this area has consistently been the subject of major congressional hearings<sup>5</sup> and news coverage.<sup>6</sup>

Finally, in our efforts to promote respect for federal scientists and the work they do, UCS works closely with Members of Congress, the media, and the public to alert them to any abuses of science in the federal policy-making process. The documents and other materials provided to UCS in response to this FOIA request will be used in connection with a campaign aimed at informing key decision-makers at the federal level, the general public, and self-selected subscribers.

The combined circulation and viewer-base of our national, regional, and self-subscribed outlets ensure that the information will, indeed, be widely distributed to diverse segments of the public who will benefit from the authorized disclosures concerning federal policy-making. As a consequence of this dissemination, public understanding of government operations will certainly be enhanced.

#### Factor 4: The significance of the contribution to public understanding

Disclosure of the requested records will contribute significantly to the public's understanding of the EPA's handling of the assessment of the potential impacts of hydraulic fracturing on drinking water resources and the surrounding materials and will provide insight into whether there was any political or otherwise inappropriate interference in the development of relevant documents. As described above, the assessment is a critical tool for a number of stakeholders across the country and it is critical to understand how the EPA reached its final product.

The documents that are currently available in the public domain raise significant questions due to several inconsistencies. There is a real concern that there may have been some interference from inside or outside the EPA that led to the development of a press release and executive summary that are contradictory to or remain vague about the impact of hydraulic fracturing despite concrete evidence included in the assessment itself.

The disclosure of the requested documents will provide the public a better understanding of whether the views of EPA scientists and technical experts were ever suppressed or ignored, or even changed, due to interference. The requested documents will help inform how best to utilize

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<sup>4</sup> See <http://www.ucsusa.org/our-work/center-science-and-democracy/promoting-scientific-integrity/interference-at-the-epa.html> for more information.

<sup>5</sup> See <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg34913/html/CHRG-110hhrg34913.htm>.

<sup>6</sup> See <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/23/AR2008042303074.html> and <http://bigstory.ap.org/article/groups-accuse-epa-muzzling-outside-advisers>.

the assessment in future work, and provide the public with a better understanding of how it can provide comments to the assessment, as well as shape the conversation on how EPA should proceed further on the question of hydraulic fracturing on its potential impacts on water resources.

#### Factor 5: The existence and magnitude of a commercial interest

UCS has no commercial interest in the requested records. UCS is a public interest organization chartered under IRS Code § 501(c)(3) as a non-profit, educational and charitable organization. UCS receives no corporate funding, nor does it receive funding from any entity with a financial stake in the outcome of any regulatory action that may be taken to promote or limit hydraulic fracturing or related processes. We seek to serve the public by working for a healthy environment and a safer world. We do this by combining independent scientific research and citizen action to develop innovative, practical solutions and to secure responsible changes in government policy, corporate practices, and consumer choices.

UCS is actively involved in working with government agencies, elected officials and the public toward solutions to ensure that the best possible science is available for policy-makers to use in crafting the policies that protect human health and the environment. One research aspect of this effort is focused on how freely and openly scientific information is communicated by federal agencies, like the EPA.

UCS provides its members and the public with information on science policy, primarily through its website, [www.ucsusa.org](http://www.ucsusa.org), which is updated daily with the latest news and information, including actions involving and related to federal agencies, such as the EPA. UCS seeks the requested information for the purpose of disseminating it to its members and the general public, free of charge.

#### Factor 6: The primary interest in disclosure

Because UCS has no commercial interest in the disclosure, the release cannot “primarily” be in UCS’ commercial interest. The EPA outlines that a public interest “fee waiver or reduction is justified where the public interest standard is satisfied and the public interest is greater in magnitude than that of any identified commercial interest in disclosure.” As explained above under “Factor 5,” UCS has no commercial interest that would be furthered by the requested disclosure, while the public interest served by disclosure as described above is substantial. UCS thus meets this final criterion of a public interest fee waiver.

#### **Request for Recognition as a Representative of the News Media**

As discussed above, UCS qualifies for a fee waiver under the FOIA and EPA regulations. UCS is also entitled to recognition as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii). Thus, if the EPA denies the requested fee waiver, any fees associated with the processing of this request should be “limited to reasonable standard charges for document duplication.” *Id.* U.S.C. §552 (a)(4)(A)(ii)(II).

As noted above, UCS does not seek the requested records for commercial purpose. It also regularly publishes reports and disseminates its reports and other materials via publications, its website, and newsletters. It also contributes to and maintains a blog, as well as an active Facebook and Twitter profile. As these facts demonstrate, UCS qualifies as a representative of the news media because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience.” *Id.* U.S.C. § 552(a)(4)(A)(ii)

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If, however, a public interest fee waiver is denied, we ask that you contact us and obtain consent to pay any applicable fees before conducting any activities for which fees would be incurred. Absent such consent, UCS does not agree to pay any processing fees.

Sincerely,

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